

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

CRAIG L DAVIS and YVONNE M
DAVIS,

Plaintiffs,

v.

Case No.: 2:19-cv-780-FtM-38NPM

WING ENTERPRISES, INC.,

Defendant.

_____ /

ORDER¹

Before the Court is Defendant Wing Enterprises, Inc.'s Motion to Dismiss Count V and to Strike Plaintiffs Craig and Yvonne Davis' Claims for punitive and exemplary damages ([Doc. 59](#)) and Plaintiffs' response ([Doc. 61](#)). This matter is ripe for review.

This is a products liability suit. Plaintiffs allege a defect in a ladder, which Plaintiff Craig Davis claims caused him to fall and suffer injury. Count V of the Amended Complaint attempts to assert a claim of Breach of Implied Warranty of Fitness for a Particular Purpose. Wing Enterprises contends this count should be dismissed because it fails to allege a particular purpose for the

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use of the ladder that is distinguishable from its ordinary use. In addition, Wing Enterprises seeks to strike Plaintiffs' claim for punitive and exemplary damages because Plaintiffs fail to allege specific acts or conduct necessary to make such demands.

In their response, Plaintiffs agree Count V should be dismissed. Thus, the motion to dismiss is granted. Because Count V will be dismissed, Plaintiffs must file an amended complaint. If Wing Enterprises still wishes to move to strike Plaintiffs' claim for exemplary and punitive damages, it should refile the motion after Plaintiffs file a second amended complaint.

Accordingly, it is now

ORDERED:

(1) Defendant's Motion to Dismiss Count V of Amended Complaint

([Doc. 59](#)) is **GRANTED**

(2) Plaintiffs must file a second amended complaint on or before

December 4, 2020.

(3) Defendants' Motion to Strike the claims for punitive and exemplary

damages is **DENIED without prejudice.**

DONE and ORDERED in Fort Myers, Florida on November 23, 2020.


SHERI POLSTER CHAPPELL
UNITED STATES DISTRICT JUDGE

Copies: All Parties of Record